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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,185	06/26/2001	Brett O. Hall		1737

7590 05/10/2002

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Marietta, GA 30066

EXAMINER

GIBSON, ERIC M

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,185

Applicant(s)

HALL, BRETT O.

Examiner

Eric M Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2002 and 29 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Certificate of Correction

1. The copies of the Certificate of Correction filed with the application are improper, see MPEP §1485.

Oath/Declaration

2. The oath or declaration is defective because:
 - a. It does not identify the mailing or post office address of each inventor. A mailing or post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing or post office address should include the ZIP Code designation. The mailing or post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.
 - b. The residence and mailing address are incomplete. **Residence should be City/State of the applicant and the mailing address should be the P.O./Street, City/State and ZIP Code of the applicant.** Listing the full address (P.O./Street, City/State and ZIP Code) of the applicant under residence and "same as residence" for the mailing address is also considered acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 23 recites the limitation "the status of said traffic control means" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no prior recitation of "a status" of the traffic control means in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by La Gambina (GB 2233372A):

a. As per claim 23, La Gambina teaches a road traffic control system including a plurality of speed bumps disposed along the roadway (page 2, third para.) and a controller responsive to a traffic command signal to impede the passage of vehicles and including conventional warning signs to provide alarm notification to the motorist (page 5).

Claim Rejections – 35 USC § 251

5. Claims 1-22 and proposed claim 23 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

a. As per claims 1-22, the applicant previously surrendered the subject matter of “at least one vehicle restrictor” in the prosecution of the original application. Originally filed claims 1-19 of Application No. 09/478,485 were drawn to a single “impedance device” (claim 1, line 22-23), and “a controllable road perturbation” (claims 18, line 8, and claim 19, line 9). The applied prior art Welford and Ceseri, taught a single controllable road perturbation. In the applicant’s amendment in response to the rejection (Paper No. 5 of 09/478,485), the amended claims 20-40 are now reciting “a plurality of vehicle restrictors”, and it is argued as distinguishable over the prior art

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because of the ability to restrict "*a plurality*" [emphasis applicant's] of vehicles (pages 9-10).

b. As per claim 23, in the originally filed application, the claims were amended to overcome the teaching of Welford and Ceseri by adding the limitation that the system "determines the likelihood of a collision" as stated by the applicant on page 9 of Paper No. 5 of 09/478,485. Additionally, the Examiner's reasons for allowance in Paper No. 10c of 09/478,485, also indicate that the invention is allowable over the prior art because "the controller actuates vehicle restrictors...in order to prevent a collision". Proposed claim 23 does not **at least** contain the subject matter considered to be allowable in the original application.

Response to Arguments

6. Applicant's arguments filed 3/29/2002 and 3/21/2002 have been fully considered but they are not persuasive.

a. As per the applicant's arguments concerning the rejection of 23, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., responsiveness to traffic controls that have the purpose of coordinating the movement of intersecting or merging of vehicles, pedestrians, and trains) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

b. Additionally as per claim 23, in response to applicant's argument that "the applicant's use of a traffic control means in claim 23 also has the structure to prevent collisions due to moving violations or preventing the improper presence of a vehicle within the traffic environment" (Paper No. 7, page 4), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

c. As per the applicant's argument concerning the rejections of claim 23 under 35 USC §251, the rejections stand as the reasons for improper recapture stated above are not dismissed by the applicant's statement of "it was never the intent of the applicant in the previous prosecution to surrender any patentable content" (Paper No. 7, filed 3/21/2002, page 5).

Remarks on Amendments

7. The amendments to the claims filed on 3/21/2002 and 3/29/2002 are in improper format for this application. Amendments filed in Reissue applications are filed under 37 CFR §1.173, which states that **no clean copies** be supplied, as the marked-up claims are entered, in order to show changes to the original claims.

- a. Claim 23 is improper in that all new claims **must be** completely underlined. In addition, "(amended)" **must be** included after the claim number.
- b. Furthermore, each amendment **must** include the status of each claim in the application, i.e. "patent claims 1-21 (pending); newly added claims 22-23 (pending)".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (703) 306-4545. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

EMG
April 29, 2002


MICHAEL J. ZANELLI
PRIMARY EXAMINER